



Council of the
European Union

Brussels, 23 May 2022
(OR. fr)

9296/22

Interinstitutional Files:
2018/0108(COD)
2018/0107(COD)

COPEN 206
JAI 702
CYBER 184
JAIEX 58
ENFOPOL 287
TELECOM 239
DATAPROTECT 168
EJUSTICE 56
MI 416
CODEC 767

NOTE

From: Presidency
To: Permanent Representatives Committee/Council

No. prev. doc.: 8484/22
8485/22

Subject: Regulation on European Production and Preservation Orders for electronic evidence
Directive on legal representatives for gathering evidence
- Progress report

General context

These two proposals, for a Regulation and for a Directive, were adopted by the Commission in April 2018. Following the adoption of a general approach by the Council and of a report by the Parliament, the trilogues began in February 2021. From the start the co-legislators have had differences of opinion on certain key aspects of the texts. Progress in the negotiations has been quite slow.

Procedure

A progress report was presented to the JHA Council in March 2022¹. Since then, the Presidency has intensified its efforts to reach an agreement with the Parliament.

The Parliament stated in March that it would only be prepared to resume work at technical level if the Council responded formally and in writing to its proposals. Accordingly, a formal letter of reply² to the Parliament's proposals was approved by Coreper on 18 March and sent to the Parliament's rapporteur. The rapporteur replied, underlining the substantial differences remaining between the positions of the co-legislators, in particular as regards the rules relating to the system for notifying orders.

Following regular contact and additional proposals from the Presidency, work at technical level resumed and an interinstitutional meeting took place at the Parliament on 17 May. The Presidency has pushed to establish a timetable for regular discussions which will be conducive to their steady and effective progress. This has enabled further technical meetings to be set up, and discussions at political level will resume on 14 June. Discussions are taking place in a spirit of cooperation, but most of the differences of opinion persist.

The relevant working party (COPEN) and Coreper have been kept regularly informed and have been consulted throughout the negotiations with the Parliament.

The substance of the matter

The Presidency believes that there is a will on both sides to find compromises that would be acceptable to the co-legislators. Solutions are possible to most of the issues. The Presidency has worked to ensure that the discussions cover all the issues raised by the proposals and that they do not focus solely on the issues where the co-legislators differ most. This holistic approach has borne fruit and all the issues are now on the agendas of the ongoing technical meetings with the Parliament.

¹ 6322/22.

² 7106/22.

However, substantial differences remain, in particular as regards:

- the rules relating to the system for notifying orders – here the Parliament continues to insist on a mandatory notification system for all orders concerning traffic or content data, irrespective of the basis for the criminal proceedings in the issuing Member State for which those data are required. The Council seems unable to approve such a solution;
- the rules relating to the data protection regime, for which some technical and substantive issues remain unresolved;
- the content of the list of grounds for refusal to enforce an order.

In general, the Presidency has always stressed that both texts should be effective and easy to apply, while ensuring the protection of fundamental rights. Any draft compromise will therefore be assessed in the light of the overall functioning of the resulting mechanism.

Outlook

With the recent resumption of formal negotiations, work is moving in a positive direction, although much remains to be done. The Presidency will continue its efforts until the very end of its mandate to move the work forward at the Council and in the negotiations with the Parliament. If necessary, it will enable the upcoming Czech Presidency to resume work under the best possible conditions.
